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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,331	12/09/2004	Claudio Miguel Suarez	331.1082	2921
23280	7590	12/10/2009		
Davidson, Davidson & Kappel, LLC			EXAMINER	
485 7th Avenue			HAND, MELANIE JO	
14th Floor				
New York, NY 10018			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			12/10/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CLAUDIO MIGUEL SUAREZ

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Application No. 10/517,331  
Technology Center 3700

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Mailed: December 10, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 7, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

AMENDMENT AFTER FINAL

A review of the file indicates that on February 11, 2008, Appellant filed an Amendment After Final in response to the Final Rejection mailed September 10, 2007. It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed. Clarification from the Examiner is required.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on August 31, 2009, in response to the Examiner's Answer mailed July 7, 2009.

Title 37, Code of Federal Regulations, §41.43 states:  
(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed December 1, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

Accordingly, it is ORDERED that the application be returned to the Examiner to:

- 1) appropriately respond to the Amendment After Final;
  - 2) vacate the Examiner's Answer mailed November 13, 2008;
  - 3) provide a new Examiner's Answer including a correct "Status of Amendment" section in addition to correction to other sections as required;
  - 4 vacate the Communication mailed December 1, 2009;
  - 5) generate and mail either:
    - a) a revised Communication properly acknowledging to the Reply Brief dated August 31, 2009 in accordance with MPEP§ 1208, part II.;
- OR
- b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate;
- and
- 6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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